

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 RITA M. LANE
Deputy Attorney General
4 State Bar No. 171352
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3788

13 **MIGUEL A. CHAVEZ**
14 **632 North Highland Street**
Orange, CA 92867

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 65899**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about November 10, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 65899 to Miguel A. Chavez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on October 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a) of the Code states that every license issued may be suspended or revoked.

STATUTORY PROVISIONS

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

....

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 8. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or
misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
8 not limited to, any of the following:

9

10 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
deceit, or corruption, whether the act is committed in the course of relations as a
11 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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13 (l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a
14 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
16 be conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
17 fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
18 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
21 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment.

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24 REGULATORY PROVISIONS

25 9. California Code of Regulations, title 16, section 1769 states:

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27 (b) When considering the suspension or revocation of a facility or a personal
28 license on the ground that the licensee or the registrant has been convicted of a crime,

1 the board, in evaluating the rehabilitation of such person and his present eligibility for
2 a license will consider the following criteria:

3 (1) Nature and severity of the act(s) or offense(s).

4 (2) Total criminal record.

5 (3) The time that has elapsed since commission of the act(s) or offense(s).

6 (4) Whether the licensee has complied with all terms of parole, probation,
7 restitution or any other sanctions lawfully imposed against the licensee.

8 (5) Evidence, if any, of rehabilitation submitted by the licensee.

9 10. California Code of Regulations, title 16, section 1770 states:

10 For the purpose of denial, suspension, or revocation of a personal or facility
11 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
12 Professions Code, a crime or act shall be considered substantially related to the
13 qualifications, functions or duties of a licensee or registrant if to a substantial degree
14 it evidences present or potential unfitness of a licensee or registrant to perform the
15 functions authorized by his license or registration in a manner consistent with the
16 public health, safety, or welfare.

13 COSTS

14 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 FIRST CAUSE FOR DISCIPLINE

19 **(January 26, 2010 Criminal Conviction for Grand Theft by Embezzlement)**

20 12. Respondent subjected his registration to discipline under sections 490 and 4301,
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about January 26, 2010, in a criminal proceeding entitled *People of the State*
24 *of California v. Miguel A. Chavez, aka Miguel Angel Chavez*, in Orange County Superior Court,
25 case number 09HM09694, Respondent was convicted on his plea of guilty for violating Penal
26 Code section 487, subdivision (a), grand theft by embezzlement, a misdemeanor.

27 b. As a result of the conviction, on or about January 26, 2010, Respondent
28 was sentenced to one day in jail (with credit for one day), and one year informal probation.

1 Respondent was further ordered to complete 60 hours of community service, pay fines, fees, and
2 restitution in the amount of \$350.00, and comply with standard probation terms.

3 c. The circumstances that led to the conviction are that on and between May
4 and September 2009, while Respondent was employed by an Orange County gas station/car wash
5 business, a supervisor noticed that an unusually large amount of "Wonder Card" transactions had
6 taken place during the time Respondent was on duty as a cashier. Customers could purchase
7 Wonder Card passes that lasted 30 or ninety days. When a customer got a car wash, the ticket
8 taker would write down the license plate number on a ticket and give the ticket to the customer.
9 The customer would then take the ticket to the cash register to pay for the car wash. Respondent
10 would ring up cash transactions as Wonder Card transactions when the customer did not use a
11 Wonder Card and then pocket the cash. When confronted with the allegations by supervisors,
12 Respondent admitted he had taken the cash during the transactions. The business estimated a
13 total financial loss of approximately \$9,245.00. Respondent was subsequently arrested for grand
14 theft by the Newport Beach Police Department on or about October 20, 2009.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty, Fraud & Deceit)**

17 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
18 Code in that on or about and between May and September 2009, Respondent stole money from
19 his employer using dishonesty, fraud, and deceit, as detailed in paragraph 12, above.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 65899,
24 issued to Miguel A. Chavez;

25 2. Ordering Miguel A. Chavez to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

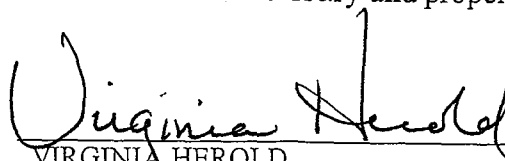
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3. Taking such other and further action as deemed necessary and proper.

DATED:

1/4/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2010703231